IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs November 22, 2005

STATE OF TENNESSEE v. SHARFYNE L'NELL WHITE

Appeal from the Circuit Court for Montgomery County
No. 40200541, 40200543, 40200549, 40200550 John H. Gasaway, III, Judge

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No. M2004-03071-CCA-R3-CD - Filed March 9, 2006

The defendant pled guilty to four counts of aggravated robbery and two counts of vehicular homicide by creating a substantial risk of death or serious bodily injury. The trial court sentenced the defendant to an effective sentence of thirty-three years as a Range I offender. Case numbers 549 and 550[1] involved two aggravated robbery convictions with sentences of nine years and six months to be served concurrently. Case number 541 involved one conviction of aggravated robbery with a sentence of nine years and six months. Case number 543 involved one conviction for aggravated robbery, Count 1, with a sentence of nine years and six months and two convictions for vehicular homicide, Counts 6 and 7, with sentences of four years and six months to be served concurrently. Case numbers 549 and 550 were ordered served concurrently, as were Counts 6 and 7 of 543, because this was part of the defendant's plea agreement. The trial court ordered Case number 541 to be served consecutively to the concurrent sentences in Case numbers 549 and 550. Then the trial court ordered Count 1 of Case number 543 to be served consecutively to Case number 541. Finally, the trial court ordered Counts 6 and 7, which were being served concurrently, to be served consecutively to Count 1 of Case number 543. The defendant appeals the trial court's judgments arguing that the trial court erred in setting the length of sentence and in ordering the consecutive service of the sentences. We affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Trial Court is Affirmed

JERRY L. SMITH, J., delivered the opinion of the court, in which DAVID H. WELLES, and DAVID G. HAYES, JJ., joined.

Roger E. Nell, District Public Defender, Clarksville, Tennessee, for the appellant, Sharfyne L'Nell White.

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[1] The case numbers with regard to this defendant all begin with 40200. We will refer to the case numbers by their last three numbers to minimize confusion.

Paul G. Summers, Attorney General and Reporter; Mark A. Fulks, Assistant Attorney General; John Carney, District Attorney General; and Helen Youngand Angie Dalton, Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

The following summary of events was related at the defendant's first guilty plea hearing on two counts of aggravated robbery and two counts of misdemeanor theft:

> [O]n May 25th, 2002, the defendant entered the Texaco located at 1390 Ft. Campbell Boulevard here in Clarksville, approximately 11 o'clock P.M.. Approached the clerk in the store, a Mr. David Goodman. Mr. Goodman will testify that Mr. White showed him a handgun, demanded money. Mr. Goodman turned over approximately three hundred dollars to him. Was able to give a good description of both the suspect and the car driven by the suspect, which matched the defendant in his car. The videotape malfunctioned, so we do not have a tape of that incident. The Defendant did confess to that incident with the exception that he claims that he did not have a handgun.
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> [O]n May 28th, 2002, at the Texaco located at 3073 Wilma Rudolph Boulevard. This occurred at approximately 10:45 P.M. The clerk in that store is a lady by the name of Leah Cook and she would likewise testify that the suspect entered the store, approached her, demanded the money. She questioned him, what do you say? [sic] She stated that he pulled a handgun approximately half way out of his pants pocket. Again, demanded the money. She turned over an undetermined amount of cash to him and he left the store.

The following events were recounted at a second guilty plea hearing:

> [A]n allegation that occurred on May 31st of 2002 at the Wilma Rudolph Texaco at 21 hundred Wilma Rudolph about a quarter till midnight.
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> The clerk, a Sheila Densmore (phonetic spelling), would testify that a man she later identified as being Mr. White came in, asked to use the rest room; came out of the rest room, approached the counter, purchased two cigars and then said give me money. At that point she asked him if he was kidding; and she states that he raised

his shirt up and showed her the pistol grip of what appeared to be a revolver to her in his right front pocket. She gave him the money; he left on foot.

That was captured on video, Your Honor and clearly shows Mr. White as being the person who committed that robbery. He was I-D'd by the clerk; he also confessed to Detective Alan Charvis.

The second allegation, Your Honor, centers around the robbery, I believe of the Fairfield Inn located at one ten Westfield Court. That occurred on June seventh of 2002 at about 12:15 in the afternoon, Your Honor.

A BOLO [be on the lookout] went out; the clerk reported and would testify that, again, a light complected black male came into the inn, asked about room rates, left came back in, went to the rest room, approached the desk, demanded money. The clerk looked at him; he opened a black backpack type bag, showed him what he describes as being a revolver, a black handgun, he turned the money over and the suspect left. He was witnessed getting into what was described as being a green Plymouth Breeze automobile, which was later identified as being the Defendant.

The clerk from that hold up also identified him as well as a witness that was simply in the hotel at the time. In both instances he took U.S. currency from the clerk.

Upon the robbery at the Fairfield Inn, Your Honor, which, again, I think the nine-one-nine – at 12:15, obviously, a BOLO went out to be on the lookout for this particular automobile and suspect. At, I believe, it was seven minutes after 1:00, almost an hour later, Officer Carlos Menatto (phonetic spelling) spotted what he believed to be the Defendant on Needmore Road going towards Hundred and First Parkway. He followed him for some distance until the backup officers joined him. He activated emergency equipment, at which time the individual in the car, later identified as the Defendant, did flee from the officers. This pursuit lasted several minutes, Your Honor, covered several neighborhoods crossed Hundred and First Parkway a number of times.

We have that pursuit on video, Your Honor. At one point Officer Marty Watson, Sergeant Watson, wrecked in pursuit of the Defendant. At this point, Your Honor, the car driven by Officer David Scott with his trainee, Officer Jamell Diaz Santiago, became the lead car in the pursuit. The Defendant went through what's described as Bellaire Subdivision, crossed, I believe it was Ashby Road and started up onto the One Hundred and First Parkway again.

At this point he attempted to go behind – go past a civilian car in the right-hand emergency lane, Your Honor. When the Defendant did that Officer Scott

started to pursue him; however, the car that the Defendant had passed saw the blue lights. At the same time that Officer Scott started to move to the right that car also moved to the right. In effort to avoid that car Officer Scott was forced to cut his automobile back to the left towards the center lane; his car went into a skid and he went into the oncoming traffic and struck a truck head-on. Both officer [sic] Santiago and Officer Scott were killed in that crash and announced dead at the scene. That's the basis for the vehicular homicide, Your Honor.

As in the other cases there are eyewitness I-Ds to this particular robbery at the Fairfield Inn, as well as the officers that were in the pursuit, and the video, and, likewise, Mr. White did confess to his participation in the robbery at the Fairfield Inn and to the fact that he fled from the officers that day.

The Montgomery County grand jury indicted the defendant with four counts of aggravated robbery, four counts of misdemeanor theft, two counts of felony murder, two counts of vehicular homicide, and one count of felony evading arrest. The defendant pled guilty in two appearances on May 17, 2004 and November 11, 2004, to four aggravated robbery counts and two vehicular homicide counts. The State dismissed all the other charges against the defendant. The trial court accepted the guilty pleas. On December 6, 2004, the trial court sentenced the defendant to an effective sentence of thirty-three years of incarceration. The defendant appeals his sentence.

ANALYSIS

The defendant argues that the trial court erred in setting both the length of the sentences and in ordering his sentences to be served consecutively. "When reviewing sentencing issues . . . , the appellate court shall conduct a de novo review on the record of such issues. Such review shall be conducted with a presumption that the determinations made by the court from which the appeal is taken are correct." Tenn. Code Ann. § 40-35-401(d). "However, the presumption of correctness which accompanies the trial court's action is conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances." State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991). In conducting our review, we must consider the defendant's potential for rehabilitation, the trial and sentencing hearing evidence, the pre-sentence report, the sentencing principles, sentencing alternative arguments, the nature and character of the offense, the enhancing and mitigating factors, and the defendant's statements. Tenn. Code Ann. §§ 40-35-103(5), -210(b); Ashby, 823 S.W.2d at 169. We are to also recognize that the defendant bears "the burden of demonstrating that the sentence is improper." Ashby, 823 S.W.2d at 169.

In balancing these concerns, a trial court should start at the presumptive sentence, enhance the sentence within the range for existing enhancement factors, and then reduce the sentence within the range for existing mitigating factors. Tenn. Code Ann. § 40-35-210(e). No particular weight for each factor is prescribed by the statute. See State v. Santiago, 914 S.W.2d 116, 125 (Tenn. Crim. App. 1995). The weight given to each factor is left to the discretion of the trial court as long as it

comports with the sentencing principles and purposes of our code and as long as its findings are supported by the record. Id.[2]

The trial court made the following findings at the conclusion of the sentencing hearing:

> [T]he Court finds that the Defendant has a previous history of criminal convictions or criminal behavior in addition to those necessary to establish the appropriate range. What that means is that as a range one standard offender, which Mr. White is, the Court may consider and does consider the fact that he has been engaged in criminal behavior involving the possession of marijuana and the violation of the bad check law.
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> The Court does consider but gives little weight to the testimony that as a juvenile under the conditions described, he possessed a knife on school grounds, although it is criminal behavior, the weight to give that by the Court will be slight.
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> Each of the aggravated robbery convictions carries a range of punishment of eight to twelve years and a possible fine not to exceed twenty-five thousand dollars. An announcement was made back on May 17th, 2004, by the State and the Defense that they had reached an agreement that while the length of the sentence and the manner of service for the sentence for the aggravated robbery convictions resulting from his guilty pleas to count one of case 40200549, and count one in 40200550, would be determined by the Court. Whatever the Court decided, the sentences in those two cases, would be served concurrently.
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> On November 4th, 2004, Mr. White entered pleas of guilty under count one of 40200541, he entered a plea of guilty to aggravated robbery. And under 40200543, he entered a plea of guilty to aggravated robbery. Under Counts six and seven, he entered pleas of guilty to reckless vehicular homicide.

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[2] We note that the Tennessee Supreme Court has determined that despite the ability of trial judges to set sentences above the presumptive sentence based on the finding of enhancement factors neither found by a jury or admitted by a defendant, Tennessee's sentencing structure does not violate the Sixth Amendment and does not conflict with the holdings of Blakely v. Washington, 542 U.S. 296 (2004), United States v. Booker, 543 U.S. 220 125 (2005), or United States v. FanFan, the case consolidated with Booker, because "the Reform Act [of Tennessee] authorizes a discretionary, non-mandatory sentencing procedure and requires trial judges to consider the principles of sentencing and to engage in a qualitative analysis of enhancement and mitigating factors . . . all of which serve to guide trial judges in exercising their discretion to select an appropriate sentence within the range set by the Legislature." State v. Gomez, 163 S.W.3d 632, 661 (Tenn. 2005). Effective July 1, 2005, the Tennessee General Assembly amended the sentencing act to reflect the advisory nature of enhancement factors.

An agreement was reached and an announcement was made at that time that again, the Court would determine the length of the sentence and the manner of service, but the sentence imposed by the Court with regard to counts six and seven, would be served concurrently.

Under 40-35-113, the Court finds that under sub-section 13, in mitigation, that Mr. White entered pleas of guilty to these charges and thus, avoided the time, effort and expense associated with the trial of each of these cases.

[U]nder 40-35-102, under our Tennessee Criminal Sentencing Reform Act of 1989, the court is given guidance with regard to sentencing or I should say purposes of the Act, and the Court is mindful that the punishment to be imposed by the Court today, should be done to prevent crime and promote respect for the law by providing an effective general deterrence to those likely to avoid the criminal – excuse me, to violate the criminal laws of this state.

Under 40-35-103, the Court is mindful of the sentencing considerations therein set out, and the Court is mindful under sub-section b that confinement is necessary to avoid depreciating the seriousness of the offense or confinement is particularly suited to provide an effective deterrence to others likely to commit similar offenses.

The Court has considered the other purposes in sentencing considerations set out in the Statutes and given the weight to which the court believes they are entitled. The Court has considered under 40-35-104, regarding the sentencing alternatives, the Court is well aware of the alternatives that are available to the Court when it comes to the sentences that are imposed not only with regard to the aggravated robbery convictions, but the reckless vehicular homicide convictions.

The Court is also mindful and has considered 40-35-115. Under that code section, if a defendant is convicted of more than one criminal offense, the Court shall order sentences to be served concurrently or consecutively, as provided by the criteria that is set out in that law. A number of – I should say a number, some seven parts, is set out. Under sub-section 4, at the time of the commission of these offenses, the Defendant was, indeed, a dangerous offender whose behavior indicated little or no regard for human life, and no hesitation about committing a crime in which the risk to human life was high.

I agree with [the assistant district attorney] that today his contrition is genuine, but I also agree moreover with [the assistant district attorney] that he must be sentenced for what he did and it must be appropriate under the facts and circumstances of the case.

Considering all of the above, the Court fixes the actual sentence in count one of case number 40200549 at nine years and six months. The Court fixes the actual sentence in 40200550 at nine years and six months. Those sentences to be served concurrently.

In case number 40200541, the Court fixes the actual sentence at nine years and six months.

In 40200543, the Court fixes the actual sentence at nine years and six months.

In count six of 40200543, the Court fixes the actual sentence at four years and six months.

In count seven of 40200543, the Court fixes the actual sentence at four years and six months.

The sentence in counts six and seven of 40200543 by agreement will be served concurrently. The sentence imposed – the concurrent sentences imposed in case numbers 40200549 and 40200550 – let me restate that. The sentences – the sentence imposed in case number 40200541 shall be served consecutive to the concurrent sentences ordered in count one of case number 40200549 and 40200550. And the sentence imposed in case number 40200543 shall be served consecutive to the sentence imposed in case number 40200541. And the concurrent sentences in count six and seven of 40200543, shall be served consecutive to the sentence imposed in 40200543, for an effective total sentence of thirty-three years with the sentence to be served in confinement at the Department of Corrections.

As is clear from the excerpt above, the trial court "considered the sentencing principles and all relevant facts and circumstances." Ashby, 823 S.W.2d at 169. Therefore, the trial court's findings and determinations are accompanied by a presumption of correctness. Id.

Length of Sentence

Aggravated robbery is a Class B felony with a sentencing range of eight to twelve years for a Range I offender. Vehicular homicide through driving in a manner that creates a substantial risk of death or serious bodily injury is a Class C felony with a sentencing range of three to six years for a Range I offender. The trial court increased the aggravated robbery sentence by one and a half years from a minimum of eight years. The trial court increased the vehicular homicide sentences by one and a half years from a minimum of three years.

The trial court found one enhancement factor which was that "[t]he defendant has a previous history of criminal convictions or criminal behavior in addition to those necessary to establish the

appropriate range . . . ." Tenn. Code Ann. § 40-35-114(2) (2003). The trial court stated that the defendant's previous criminal behavior involving possession of marijuana and a violation of the bad check law supported the application of this enhancement factor. We agree with the trial court on the application of this factor. The trial court also applied one mitigating factor, that the defendant pled guilty and saved the State time and money. This mitigating factor should not be afforded much weight. There is a range of four years for the sentence of aggravated robbery and three years for the sentence of vehicular homicide. The trial court only increased each sentence by one year and six months over the minimum for this one enhancement factor and one lightly-weighted mitigating factor. As stated above, there is a presumption of correctness. The defendant has not demonstrated that the sentence is improper. We conclude that the application of this enhancement factor and the increase above the minimum for each conviction is supported by the record.

Therefore, this issue is without merit.

Consecutive Sentencing

The defendant also argues that the trial court erred in imposing consecutive sentences. A trial court may impose consecutive sentencing upon a determination that one or more of the criteria set forth in Tennessee Code Annotated section 40-35-115(b) exists. This section permits the trial court to impose consecutive sentences if the court finds, among other criteria, that "the defendant is a dangerous offender whose behavior indicates little or no regard for human life, and no hesitation about committing a crime in which the risk to human life is high." Tenn. Code Ann. § 40-35-115(b)(4). However, before ordering the defendant to serve consecutive sentences on the basis that he is a dangerous offender, the trial court must find that the resulting sentence is reasonably-related to the severity of the crimes, necessary to protect the public against further criminal conduct, and in accord with the general sentencing principles. See State v. Imfeld, 70 S.W.3d 698, 708-09 (Tenn. 2002); State v. Wilkerson, 905 S.W.2d 933, 938-39 (Tenn. 1995).

At the sentencing hearing, the trial court stated:

> Under sub-section 4 [of Tennessee Code Annotated section 40-35-115], at the time of the commission of these offenses, the Defendant was, indeed, a dangerous offender whose behavior indicated little or no regard for human life, and no hesitation about committing a crime in which the risk to human life was high.
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> . . . .
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> I also agree moreover with [the assistant district attorney] that he must be sentenced for what he did and it must be appropriate under the facts and circumstances of the case.

Clearly, the trial court stated that the defendant was a dangerous offender and consecutive sentencing was reasonably-related to the severity of the crime. We agree with the trial court. The defendant went on a crime spree over a two-week period and completed several robberies, which culminated in a high-speed chase with the police. As a direct result, a patrol car carrying two officers had a head-on collision with a truck that resulted in the death of the two officers. We conclude that an effective sentence of thirty-three years for the deaths of two officers in the line of duty, as well as the completion of several aggravated robberies, is reasonably-related to the seriousness of the defendant's conduct.

Therefore, this issue is without merit.

CONCLUSION

For the foregoing reasons, we affirm the judgment of the trial court.

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JERRY L. SMITH, JUDGE